

## § 36.4323

## 38 CFR Ch. I (7–1–11 Edition)

costs to the Secretary for the acquisition and disposition of the property from the fair market value, as determined under paragraph (b) of this section. Those costs will be calculated using the percentage derived by the Secretary and published in the FEDERAL REGISTER pursuant to § 36.4301.

(d) If the holder learns of any material damage to the property occurring after the appraisal and prior to the liquidation sale, the impact of such damage on the fair market value must be determined in consultation with the fee appraiser, and the net value adjusted accordingly.

(e)(1) A holder may approve a compromise sale of the property securing the loan without the prior approval of the Secretary provided that:

(i) The holder has determined the loan is insoluble;

(ii) The credit to the indebtedness (consisting of the net proceeds from the compromise sale and any waiver of indebtedness by the holder) must equal or exceed the net value of the property securing the loan; and

(iii) The current owner of the property securing the loan will not receive any proceeds from the sale of the property.

(2) A holder may request advance approval from the Secretary for a compromise sale notwithstanding that all of the conditions specified in paragraph (e)(1) of this section cannot be met if the holder believes such compromise sale would be in the best interests of the veteran and the Secretary.

(f)(1) A holder may accept a deed voluntarily tendered by the current owner of the property securing the loan in lieu of conducting a foreclosure without the prior approval of the Secretary provided that:

(i) The holder has determined the loan is insoluble;

(ii) The holder has computed the net value of the property securing the loan pursuant to paragraph (c) of this section;

(iii) The holder has considered a compromise sale pursuant to paragraph (e) of this section and determined such compromise sale is not practical; and,

(iv) The holder has determined the current owner of the property can convey clear and marketable title to the

property that would meet the standard stated in paragraph (d)(5) of § 36.4323.

(2) A holder may request advance approval from the Secretary for a deed-in-lieu of foreclosure notwithstanding that all of the conditions specified in paragraph (f)(1) of this section cannot be met if the holder believes such deed-in-lieu would be in the best interests of the veteran and the Secretary.

(Authority: 38 U.S.C. 3703(c), 3732)

[73 FR 6310, Feb. 1, 2008. Redesignated at 75 FR 33705, June 15, 2010, as amended at 75 FR 65238, Oct. 22, 2010]

### § 36.4323 Election to convey security.

(a) If the holder acquires the property that secured the guaranteed loan at the liquidation sale or through acceptance of a deed-in-lieu of foreclosure and if, under 38 U.S.C. 3732(c), the Secretary may accept conveyance of the property, the holder must notify the Secretary by electronic means no later than 15 calendar days after the date of liquidation sale (*i.e.*, the event which fixes the rights of the parties in the property, such as the date of foreclosure sale, date of recordation of a deed-in-lieu of foreclosure, or confirmation/ratification of sale date when required under local practice) that the holder elects to convey the property to the Secretary. The Secretary will not accept conveyance of the property if the holder fails to notify the Secretary of its election within such 15 calendar days. In computing the eligible indebtedness under 38 U.S.C. 3732(c), the holder may follow the alternative procedure described in paragraph (b) of this section.

(b) If the calculation by the holder shows that the net value is equal to or less than the unguaranteed portion of the loan (*i.e.*, the total indebtedness minus VA's maximum claim payable under the guaranty), this would preclude conveyance under 38 U.S.C. 3732(c). However, the holder may desire to convey the property to VA and may decide to waive a portion of the indebtedness to the extent that the property may be conveyed under 38 U.S.C. 3732(c). In such a case, the holder must provide the notice described in paragraph (a) of this section, and must subsequently waive that portion of the

total indebtedness remaining after application of the net value amount and VA's guaranty claim payment. The holder must send the borrower(s) a notice describing the amount of indebtedness that has been waived no later than 15 calendar days after receipt of the guaranty claim.

(c) The holder, in accounting to the Secretary in connection with the conveyance of any property pursuant to this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4314. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under 38 U.S.C. 3732(c):

(1) State and documentary stamp taxes as may be required.

(2) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (d)(4) of this section.

(3) Recording fees.

(4) Any other expenditures in connection with the property which are approved by the Secretary, including, but not limited to, the cost of a title policy insuring title in the name of the Secretary of Veterans Affairs.

(d) The conveyance or transfer of any property to the Secretary pursuant to this section shall be subject to the following provisions:

(1) The notice of the holder's election to convey the property to the Secretary shall state the amount of the holder's successful bid and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date. With respect to a voluntary conveyance to the holder in lieu of foreclosure, the amount of the holder's successful bid shall be deemed to be the lesser of the net value of the property or the total indebtedness.

(2) Coincident with the notice of election to convey or transfer the property to the Secretary or with the acquisition of the property by the holder, following such notice, whichever is later,

the holder shall request endorsements on all insurance policies naming the Secretary as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Secretary at the time of the conveyance or transfer of the property to the Secretary or as soon after that time as feasible. If insurers cancel policies, holders must properly account for any unearned premiums refunded by the insurer.

(3) Occupancy of the property by anyone properly in possession by virtue of and during a period of redemption, or by anyone else unless under a claim of title which makes the title sought to be conveyed by the holder of less dignity or quality than that required by this section, shall not preclude the holder from conveying or transferring the property to the Secretary. Except with the prior approval of the Secretary, the holder shall not rent the property to a new tenant, nor extend the term of an existing tenancy on other than a month-to-month basis.

(4) The notice shall provide property tax information to include all taxing authority property identification numbers. Any taxes, special assessments or ground rents due and payable within 30 days after date of conveyance or transfer to the Secretary must be paid by the holder.

(5)(i) Each conveyance or transfer of real property to the Secretary pursuant to this section shall be acceptable if:

(A) The holder thereby covenants or warrants against the acts of the holder and those claiming under the holder (e.g., by special warranty deed); and

(B) It vests in the Secretary or will entitle the Secretary to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated.

(ii) Any title will not be unacceptable to the Secretary by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4354(b), *Provided*, that:

(A) At the time of conveyance or transfer to the Secretary there has

been no breach of any conditions affording a right to the exercise of any reverter.

(B) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4327.

(iii) The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will generally be established by delivery to the Secretary of the following evidence of title showing that title to the property of the quality specified in this paragraph (d)(5) is or will be vested in the Secretary:

(A) A copy of the deed or document evidencing transfer of interest and title at the liquidation sale;

(B) A special warranty deed conveying the property to the Secretary;

(C) Origination Deed of Trust or Mortgage;

(D) Original or Copy of Mortgagee's Title Insurance Policy from Loan Origination (except in Iowa, where a title abstract is required);

(E) Owner's Title Insurance Policy issued after loan termination in the name of the Secretary (except in Iowa, where a title abstract is required);

(F) Loan Assignments;

(G) Appointment of Substitute Trustee (where required as part of the termination process);

(H) Estoppel Affidavit for deed in lieu of foreclosure, if required by State law and appropriate language cannot be included in the deed in lieu of foreclosure; and/or

(I) Any evidence that the Secretary may reasonably require.

(iv) In lieu of such title evidence listed in paragraph (d)(5)(iii) of this section, the Secretary will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 3702(d) or from a holder of financial responsibility satisfactory to the Secretary.

(6) Except with respect to matters covered by any covenants or warranties of the holder, the acceptance by the Secretary of a conveyance or transfer by the holder shall conclude the responsibility of the holder to the Secretary under the regulations of this subpart with respect to the title. In the

event of the subsequent discovery of title defects, the Secretary shall have no recourse against the holder with respect to such title other than by reason of such covenants or warranties.

(7) As between the holder and the Secretary, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (d)(11) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Secretary. Such risk of loss is assumed by the Secretary from the date of receipt of the holder's election to convey or transfer the property to the Secretary. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Secretary at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Secretary may surrender custody of the property as of the date specified in the Secretary's notice to the holder. The Secretary's assumption of such risk shall terminate upon such surrender.

(8) The conveyance should be made to "Secretary of Veterans Affairs, an Officer of the United States." The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(9) The holder shall not be liable to the Secretary for any portion of the paid or unpaid taxes, special assessments, ground rents, insurance premiums, or other similar items. The holder shall be liable to the Secretary for all penalties and interest associated with taxes not timely paid by the holder prior to conveyance.

(10) The Secretary shall be entitled to all rentals and other income collected from the property and to any insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(11) In respect to a property which was the security for a condominium loan guaranteed or insured under 38 U.S.C. 3710(a)(6) the responsibility for

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any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Secretary until the Secretary expressly assumes such responsibility or until conveyance of the property to the Secretary, whichever first occurs. The holder shall have the right to convey such property to the Secretary only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Secretary agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(e) Except as provided in paragraph (d)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4328. The Under Secretary for Benefits, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia, *Provided*, that no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

(Authority: 38 U.S.C. 3720, 3732)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0381)

[73 FR 6310, Feb. 1, 2008. Redesignated at 75 FR 33705, June 15, 2010, as amended at 75 FR 65238, Oct. 22, 2010]

### § 36.4324 Guaranty claims; subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally

guaranteed, or in the case of a modified loan, such amount as may have been increased under the provisions of § 36.4815(h)(2), the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed, or the percentage as adjusted under § 36.4815(h)(2), whichever is applicable, applied to the sum of:

(1) The unpaid principal as of the date of the liquidation sale;

(2) Allowable expenses/advances as described in § 36.4814; and

(3) The lesser of:

(i) The unpaid interest as of the date of the liquidation sale; or

(ii) The unpaid interest for the reasonable period that the Secretary has determined, pursuant to § 36.4822(a), it should have taken to complete the foreclosure, plus 210 days from the due date of the last paid installment. This amount will be increased if the Secretary determines the holder was unable to complete the foreclosure within the time specified in this paragraph due to Bankruptcy proceedings, appeal of the foreclosure by the debtor, the holder granting forbearance in excess of 30 days at the request of the Secretary, or other factors beyond the control of the holder.

(b) Deposits or other credits or setoffs legally applicable to the indebtedness shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(c)(1) Credits accruing from the proceeds of a liquidation sale shall be reported to the Secretary incident to claim submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(2) The amount payable under the guaranty shall be computed applying the formulae in 38 U.S.C. 3732(c). With respect to a voluntary conveyance to the holder in lieu of foreclosure, the holder shall be deemed to have acquired the property at the liquidation sale for the lesser of the net value of the property or the total indebtedness.

(d)(1)(i) Except as provided in paragraph (d)(1)(ii) of this section, holders shall file a claim for payment under